UNITED STATES PATENT AND TRADEMARK-QFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Seven M. Senn 18336 Aurora Ave N Suite 112-421 Shoreline WA 98133

**COPY MAILED** 

AUG 0 7 2008

In re Application of

Steven M. Senn

Application No. 09 888,554

Filed: June 26, 2001

Title: Retail Customer and Product Purchase Divider with Interactive Retail Transaction

Functions

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 18, 2008, to revive the above-identified application.

The petition is DISMISSED.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is not a final agency action within the meaning of 5 U.S.C. § 704.

This above-identified application became abandoned for failure to timely file a reply to a non-final Office Action mailed October 3, 2003. The non-final Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on January 4, 2004. A Notice of Abandonment was mailed on May 5, 2004.

Petitioner states that he did not receive the October 3, 2003 non-final Office action and the Notice of Abandonment because he no longer received mail at the correspondence address of record. Petitioner states he unintentionally failed to submit a change of address with the Office.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the

Application No. 09/888,554 petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item (1) and (3).

As to item (1) petitioner has failed to provide a reply to the non-final Office action. A courtesy copy of the October 3, 2003 Office action is being included for petitioner's convenience.

As to item (3), there are three periods to be considered during the evaluation of a petition under 37 CFR 1.137(b):

- (1) the delay in reply that originally resulted in the abandonment;
- (2) the delay in filing an initial petition pursuant to 37 CFR 1.137(b) to revive the application; and
- (3) the delay in filing a grantable petition pursuant to 37 CFR 1.137(b) to revive the application.

Currently, the delay has not been shown to the satisfaction of the Director to be unintentional for period (2).

Where the applicant deliberately chooses not to seek or persist in seeking the revival of an abandoned application, or where the applicant deliberately chooses to delay seeking the revival of an abandoned application, the resulting delay in seeking revival of the abandoned application cannot be considered as "unintentional" within the meaning of 37 CFR 1.137(b). See MPEP 711.03(c).

The language of both 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b) are clear and unambiguous, and, furthermore, without qualification. That is, the delay in filing the reply during prosecution, as well as in filing the petition seeking revival, must have been, without qualification, "unintentional" for the reply to now be accepted on petition. The Office requires that the entire delay be at least unintentional as a prerequisite to revival of an abandoned application to prevent abuse and injury to the public. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 7 (1982), reprinted in 1982 U.S.C.C.A.N. 771 ("[i]n order to prevent abuse and injury to the public the Commissioner . . . could require applicants to

act promptly after becoming aware of the abandonment"). December 1997 change to 37 CFR 1.137 did not create any new right to overcome an intentional delay in seeking revival, or in renewing an attempt at seeking revival, of an abandoned application. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53160 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 87 (October 21, 1997), which clearly stated that any protracted delay (here, over four years) could trigger, as here, a request for additional information. courts have since made clear, a protracted delay in seeking revival, as here, requires a petitioner's detailed explanation seeking to excuse the delay as opposed to USPTO acceptance of a general allegation of unintentional delay. See Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633, at 1637-8 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005) at \*21-\*23. Statements are required from any and all persons having firsthand knowledge of the circumstances surrounding the protracted delay, after the abandonment date, in seeking revival.

Any renewed petition may be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

Charlema Grant

Petitions Attorney Office of Petitions

enclosure



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTONITY	
09/888,554	06/26/2001		ATTORNEY DOCKET NO.	CONFIRMATION NO
037000,33	00, 20, 2001	Steven Michael Matthew Senn		1749
	90 10/03/2003		EXAM	D/CD
Steven M. Sen	n		· · · · · · · · · · · · · · · · · · ·	
5208 - 122 Pl. S	S.E.		CUFF, MIC	CHAEL A
Everett, WA 9	8208		ART UNIT	PAPER NUMBER
	•		3627	

DATE MAILED: 10/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



ر مای	<b>L</b>	Application N	lo.	Applicant(s)			
	Office Action Summary	09/888,554		MATTHEW SENN, STEVEN (MICHAEL			
	Office Action Summary	Examiner		Art Unit			
		Michael Cuff		3627			
	The MAILING DATE of this communication app or Reply	pears on the co	ver sheet with the c	orrespondence address			
THE I - Exter after - If the - If NO - Failu - Any I	A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).  - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).						
1) 🖂	Responsive to communication(s) filed on 22.	January 2003 .					
2a) [		nis action is no	n-final.				
3)	Since this application is in condition for allowed in accordance with the practice under	ance except fo	or formal matters, p	rosecution as to the merits is			
Disposit	ion of Claims	ر الماد الماد الماد الماد	,,				
4)	Claim(s) 1-3 is/are pending in the application.		-				
	4a) Of the above claim(s) is/are withdra	wn from consi	deration.				
5)	Claim(s) is/are allowed.						
6)	Claim(s) <u>1-3</u> is/are rejected.						
7)	Claim(s) is/are objected to.						
	Claim(s) are subject to restriction and/o	or election requ	uirement.				
	ion Papers						
/	The specification is objected to by the Examine						
10)	The drawing(s) filed on is/are: a)□ acce						
44.	Applicant may not request that any objection to the						
11)	The proposed drawing correction filed on			оубы ру ше шхапппет.			
400	If approved, corrected drawings are required in reply to this Office action.						
	The oath or declaration is objected to by the E	Adminici.					
_	under 35 U.S.C. §§ 119 and 120	an priority und	r 25     C C 2 140/	a)-(d) or (f)			
•	Acknowledgment is made of a claim for foreig	an buonta mide	51 33 0.3.0. 9 119(	a)-(u) 01 (1).			
l a)	All b) Some * c) None of:	ate have been	received				
	<ul><li>1. Certified copies of the priority document</li><li>2. Certified copies of the priority document</li></ul>			tion No			
*	<ul> <li>3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</li> <li>* See the attached detailed Office action for a list of the certified copies not received.</li> </ul>						
	14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).						
	a) The translation of the foreign language provisional application has been received.  15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.						
	Attachment(s)						
1) 🔀 Noti 2) 🗌 Noti	ice of References Cited (PTO-892) ice of Draftsperson's Patent Drawing Review (PTO-948) rmation Disclosure Statement(s) (PTO-1449) Paper No(s)	5		nry (PTO-413) Paper No(s) I Patent Application (PTO-152)			

plication/Control Number: 09/888,554

rt Unit: 3627

#### **DETAILED ACTION**

### Letter concerning provisional application

Applicant submitted a letter, filed 1/22/03, which stated that a provisional application has been filed for this application. Applicant must submit a supplemental declaration/oath, which claims the continuation. The domestic priority date, when properly claimed will change the 102(b) rejection into a 102(e) rejection.

### Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

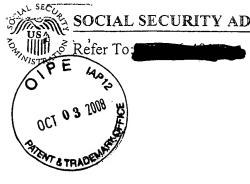
A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Tracy et al.

Tracy et al. shows, figures 4 and 5, a method and system for presenting item information using a portable terminal 100 (an exterior housing). The terminal 100 has a barcode reader 120 (electronic data input component) and a display 110. Figure 4 shows communications, including price data, through an RF 130 connection (wireless method) between the portable terminal and a POS terminal. Column 7, lines 37-41, shows an electronic marking (attached device identification), which is provided as a means for identifying the location of the bar code by the central processor.

A. Signature  A.	D. Is delivery additing different from item 1?	USPTO MAIL CENTER	3. Service Type  Certified Mail  Express Mail  Registered	7006 3450 0001, 657A 137c	m Receipt 102595-02-M-1540
SENDETH CONDUSTINATION  Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.  Print your name and address on the reverse so that we can return the card to you.  Attach this card to the back of the mailpiece, or on the front if space permits.	1. Article Addressed to:	Commissiones of afaits	Mexandra, 114 22313-	2. Article Number (Transfer from service label) 7006 31	PS Form 3811, February 2004 Domestic Return Receipt



Office of Disability Adjudication and Review Suite 500 2201 Sixth Ave Seattle, WA 98121

Date:

APR - 7 ZOOR

Steven M Senn 18336 Aurora Ave. N #112-421 Shoreline, WA 98133

#### NOTICE OF DECISION – FULLY FAVORABLE

I have made the enclosed decision in your case. Please read this notice and the decision carefully.

#### This Decision is Fully Favorable To You

Another office will process the decision and send you a letter about your benefits. Your local Social Security office or another may first ask you for more information. If you do not hear anything for 60 days, contact your local office.

#### The Appeals Council May Review The Decision On Its Own

The Appeals Council may decide to review my decision even though you do not ask it to do so. To do that, the Council must mail you a notice about its review within 60 days from the date shown above. Review at the Council's own motion could make the decision less favorable or unfavorable to you.

#### If You Disagree With The Decision

If you believe my decision is not fully favorable to you, or if you disagree with it for any reason, you may file an appeal with the Appeals Council.

#### How to File an Appeal

To file an appeal you or your representative must request that the Appeals Council review the decision. You must make the request in writing. You may use our Request for Review form, HA-520, or write a letter.

You may file your request at any local Social Security office or a hearing office. You may also mail your request right to the Appeals Council, Office of Disability Adjudication and Review, 5107 Leesburg Pike, Falls Church, VA 22041-3255. Please put the Social Security number shown above on any appeal you file.

# SOCIAL SECURITY ADMINISTRATION Office of Disability Adjudication and Review

#### ORDER OF ADMINISTRATIVE LAW JUDGE

IN THE CASE OF	CLAIM FOR	
	Period of Disability,	
	Disability Insurance Benefits, and	
Steven M Senn	Supplemental Security Income	
(Claimant)		
(Wage Earner)	(Social Security Number)	

I do not approve the fee agreement between you and your representative because:

Ĉ

You appointed representatives who are not members of the same law firm or other business, and the representative(s) from the other law firm(s) or business(s) did not waive charging and collecting a fee.

## HOW TO ASK US TO REVIEW THE FEE AGREEMENT DETERMINATION

You or your representative can ask us to review the determination on the fee agreement. If you decide to ask us for a review, write us within 15 days from the day you get this order. Tell us that you disagree and give your reasons. Send your request to this address:

David J. Delaittre
 Regional Chief Administrative Law Judge
 SSA ODAR Regional Ofc
 Suite 2900 M/S 901
 701 Fifth Ave
 Seattle, WA 98104

Your representative also has 15 days to write us if he or she does not agree with the determination on the fee agreement.

You should include the social security number(s) shown on this order on any papers you send us.

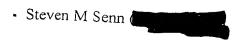
### AUTHORIZING A REPRESENTATIVE'S FEE UNDER THE FEE PETITION PROCESS

If neither you nor your representative requests review, your representative must file a fee petition if he or she wants to charge and collect a fee. I have enclosed with the representative's copy of this order a Form SSA-1560 (Petition to Obtain Approval of a Fee for Representing a Claimant before the Social Security Administration) (he/she) may use for this purpose.

Victor Sampson

Administrative Law Judge

AFR - 7, 2008



10. Considering the claimant's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that he can perform (20 CFR 404.1560(c), 404.1566, 416.960(c), and 416.966).

In determining whether a successful adjustment to other work can be made, the undersigned must consider the claimant's residual functional capacity, age, education, and work experience in conjunction with the Medical-Vocational Guidelines, 20 CFR Part 404, Subpart P, Appendix 2. If the claimant can perform all or substantially all of the exertional demands at a given level of exertion, the medical-vocational rules direct a conclusion of either "disabled" or "not disabled" cannot perform substantially all of the exertional profile (SSR 83-11). When the claimant cand/or has nonexertional limitations, the medical-vocational rules are used as a framework for decisionmaking unless there is a rule that directs a conclusion of "disabled" without considering the additional exertional and/or nonexertional limitations (SSRs 83-12 and 83-14). If the Guidelines provides a framework for decisionmaking (SSR 85-15).

Even if the claimant had the residual functional capacity for the full range of sedentary work, considering the claimant's age, education, and work experience, a finding of "disabled" would be 201.14.

The vocational expert testified that the claimant's limitations in sitting, standing, and walking erode his occupational base. Additionally, his need for close access to bathroom facilities and unpredictable breaks would exceed customary work tolerances. The vocational expert's opinion is consistent with the record as a whole and is persuasive.

11. The claimant has been under a disability, as defined in the Social Security Act, from August 23, 2003, through the date of this decision (20 CFR 404.1520(g) and 416.920(g)).

## **DECISION**

Based on the application for a period of disability and disability insurance benefits protectively filed on January 10, 2005, the claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act beginning on August 23, 2003.

Based on the application for supplemental security income protectively filed on January 10, 2005, the claimant has been disabled under section 1614(a)(3)(A) of the Social Security Act beginning on August 23, 2003.

The component of the Social Security Administration responsible for authorizing supplemental security income will advise the claimant regarding the nondisability requirements for these payments, and if eligible, the amount and the months for which payment will be made.

Victor Sampson

Administrative Law Judge

APR

Date



Dear Mr. Senn,

Your application came in from our file repository. I reviewed the case and your petition to revive is in the file. I forwarded the case to the Office of Petitions and they will act upon the petition and have the problem of the case being a hybrid file (1/2 paper and 1/2 electonic) corrected. I would give them some time to get the case docketed before calling. I'd say you should follow up in a few weeks by calling their help desk at 571-272-3282. Good luck.

Kind Regards,

Joseph F. Weiss, Jr. Patent Examination Policy Advisor Madison West 7D65 571-272-7759 (V) 571-273-7759(F)





DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Region 3 HIU N31-1 PO Box 6056 \* Arlington, WA 98223-9956 \* (425)438-4971

#### 08/08/2005

STEVE M SENN 5208 122ND PL SE EVERETT, WA 98208-9223

Client Nu Program: GA-X Language: EN

Incapacity Review Date: 07/31/2006

We have decided that you are unable to work at this time based onDigestive. The following requirements are expected to help you become able to work or reduce your need for assistance (WAC 388-448-0130). Your plan is:

You have been approved for GAX medical (better coverage). If you have questions about coverage, please refer to the number on the back of your medical coupon.

You must cooperate with treatment, including therapy and medication, as recommended by your doctor. You have been referred to an SSI Facilitator in order to determine if you may be eligible for Supplemental Security Income (SSI). You will be notified by the SSI Facilitator of any requirements resulting from this referral.

From time to time we will ask you for proof that you are following the above plan. For example, you will be asked to show that you are keeping appointments or following directions.

• Let me know right away if you have a good reason for not participating with any of the above requirements. If we accept your reason, we will change or remove the requirement and send you a copy of the new plan.

If you do not follow your plan without good reason or do not give us proof when asked, we will stop your assistance. If you reapply later, you will lose from one week up to two months of benefits as a penalty for not participating.

If you disagree with the plan or our decision to stop your assistance, you have the right to ask for a Fair Hearing.

Note: If you have questions about receiving cash, food, or medical assistance, please call: call center 438-4971

Please call me if you need help understanding this letter or with meeting these requirements.

Deanna Hudson Social Worker

Telephone: 425-339-4704

Everett CSO

DSHS 14-249 (04/2005)

# RECEIPT FOR YOUR CLAIM FOR SUPPLEMENTAL SECURITY INCOME RECEIPT DATE: February 8, 2005

On February 8, 2005, we talked with you and completed your application for Supplemental Security Income (SSI). We stored your application information, including your signature, electronically in our records and have attached a summary of your statements for your review.

#### What You Need To Do

- o Review your application to ensure we recorded your statements correctly.
- o If you agree with all your statements, you may retain the application for your records.
- o If you disagree with any of your statements, you should contact us within 10 days after the date of this receipt to let us know.

#### IMPORTANT REMINDER

Penalty of Perjury

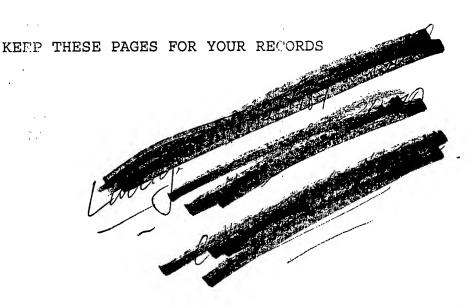
You declared under penalty of perjury that you examined all the information on this form and it is true and correct to the best of your knowledge. You were told that you could be liable under law for providing false information.

If you have a question or something to report call (125) 341 0767 × 279. For general information about Social Security, visit our web site at www.socialsecurity.gov on the Internet.

You may visit or write to the Social Security Office at:

SOCIAL SECURITY SUITE 250 8625 EVERGREEN WAY EVERETT WA 98208 Lynn

STEVEN M SENN 5208 122ND PL SE EVERETT, WA 98208





# Law Office of Dale Wagner

Focusing on Workers' Compensation and Social Security Disability Law
9820'270th Street NW
P.O. Box 698
Stanwood, WA 98292-0698
November 19, 2007

Re: Steven M. Senn

Social Security Number/Claim Number: 1

Title II & Title XVI



To Whom It May Concern:

Our office represents Steven M. Senn in the above claims. Steven applied for social security disability benefits in January of 2005. Steven stated in his application for disability insurance benefits that he has been unable to work due to his disabilities since August 23, 2003. At this time we are awaiting the scheduling of a hearing date before an administrative law judge to present Steven's claim for benefits.

If you need anything further from our office, please give me a call.

Sincerely,

Law Office of Dale Wagner

Marcella Russo

Paralegal for Dale T. Wagner Attorney for Steven Senn

Jarcella Busso

cc:

file/chrono

(360) 629-5276

Email: <u>dwagnerlaw@verizon.net</u> Website: dalewagnerlaw.com

Fax: (360) 629-9037

03/11/2000 12:00 1AA 4E0 E0: 1.07

01, 7/06 STEVE N SEMN

EVERETT FO BOX 6056 ARLINGTON WA 98223-6155 ween; gion size

Department of Social

whealth Services

Phone # --25-438-4971 TTY/TDD # #25-339-4075 Toll Free #

03/17/06

STEVE M SENN 5208 122ND PL SE EVERETT WA 98208-9223 379 6036

Dear Ms./Mr. STEVE M SELON

TO WHOM IT CONCERNS:

Steve was determined disabled and started receiving General Assistance Cash Grant and Medical (\$339/mo) in July 2005. At this time, he is still receiving this monthly assistance as well as Basic Food Assistance of \$102.00 per month. (See benefit history for Lash and food)

Rachelle Nuckies FSS 3 (425) 339 4705

Please call me if you have any questions about this letter.

CUSTOMER SERVICES(NURA) 425-438-4971

> Kachulle Nuclies

#### Questions? Visit our Web site at fedex.com

or call 1-800-Go-FedEx\* (800)463-3339.

By using this Airbill you agree to the service conditions on the back of this Airbill and in our current Service Guide, including terms that limit our liability.

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Rev. Date 12/00=Part #155915+(0)1994-2000 FedEx+PRINTED IN U.S.A. GBFE 4/01

404

Now Proposional Application

June 24, 2001 Inventor: Steven M. Semme

Title: Refail Customer and Roduct Purchase
Divider with Interactive retail Transaction

Functions.

Unity Patent Application Transmital. 10f1

Fee Transmital PTO/SB/17 [ef]

Declaration For Unity Patent - PTO/SB/01 20f2

Credit Card Paynet Form PTO-2038 10f1

Specification 13 Payes

Claims 1 Page
Disawings Fig. 11 Sheets 5

Declaration Application Facleded

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Provisional Paralication application

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